

**Remarks:**

Applicant has read and considered the Office Action dated May 20, 2010 and the references cited therein. Claims 1, 9 and 12 have been amended. Claims 1-14 are currently pending. Reconsideration is hereby requested.

In the Action, claims 1-14 were rejected under 35 U.S.C. § 112, second paragraph. The Action stated that "in particular" in claim 1, line 6, renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Claim 1 has been amended to delete the phrase in question. Applicant asserts that claim 1 is not indefinite and overcomes the rejection. Applicant requests that the rejection be withdrawn.

Claims 1-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stenzler in view of Grey. Applicant respectfully traverses the rejection. Claim 1 has been amended and is believed to distinguish over the combination of Stenzler and Gray and any other prior art or combination thereof. The Action indicates that Stenzler discloses an aerosol therapy device including a controllable aerosol generator comprising an inhalation sensor for generating therapy related data. Applicant notes that the Office Action has not addressed all of the limitations of claim 1. Moreover, claim 1 has been amended to clarify that the nebulizer comprises at least one sensor device for generating at least one therapy relevant measuring signal during therapy. Moreover, claim 1 recites that the signal is related to aerosol production and aerosol consumption. Applicant asserts that this is neither shown nor suggested by Stenzler nor addressed by the Office Action. Stenzler merely shows an on and off for start and end times. Applicant asserts that this is not a therapy relevant measuring signal. Moreover, such a signal clearly is not generated during therapy as it is only a start and stop, and therefore occurs only to begin or end such times but not during the actual therapy. Moreover, a signal is not generated during therapy and related to aerosol production and aerosol consumption.

Applicant asserts that this is not addressed in the Office Action. Applicant asserts that claim 1 clearly recites that the measuring signal distinguishes over Stenzler as the signal is generated after the start time and before the end time of aerosol administration. Such a device provides for controlling the aerosol generator at any time. Stenzler neither teaches nor suggests such control and the features recited in Stenzler are not equivalent and do not render claim 1 obvious.

Moreover, the Action states that Stenzler does not disclose that the control unit is a PDA but that Grey teaches a dose dispensing apparatus wherein a PDA is in communication with a hand held dispensing device. The Action states that it would have been obvious to one of ordinary skill in the art to provide the therapy device of Stenzler with the PDA controlling unit as taught by Grey. However, Grey fails to remedy the shortcomings of Stenzler. The combination of Stenzler and Grey fails to render claim 1 obvious. Applicant asserts that claim 1 as submitted, patentably distinguishes over the cited prior art and/or any combination thereof. Applicant requests that the rejection under 35 U.S.C. § 103(a) be withdrawn. Moreover, the claims depending from claim 1 are also believed to be allowable for at least the same reasons as well as others. Applicants therefore assert that the rejection of the dependent claims also be withdrawn for at least the same reasons.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicant's representative at (612) 336-4728.


Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.



Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: 8/20/10

By:   
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